



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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December 21, 2015

Mr. Paul Straughn
61698 Greentree Drive
South Bend, Indiana 46614

Re: Formal Complaint 15-FC-288; Alleged Violation of the Access to Public Records Act by the Saint Joseph County Assessor's Office

Dear Mr. Straughn,

This advisory opinion is in response to your formal complaint alleging the Saint Joseph County Assessor's Office ("Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Assessor responded via counsel, Mr. Frank Agostino, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 26, 2015.

BACKGROUND

Your complaint dated October 26, 2015 alleges the Saint Joseph County Assessor's Office violated the Access to Public Records Act by failing to acknowledge your public records request.

On October 5, 2015, you requested documents from the Assessor. As of the filing of your complaint, you had not received a response. You provide tracking information which shows the request was delivered on October 13, 2015, thus requiring an acknowledgment by October 20, 2015 pursuant to Ind. Code § 5-14-3-9(b).

On November 19, 2015 the Assessor responded. The Assessor's Office notes your request was substantially similar to previous requests filed. Therefore, the Assessor interpreted your October 5, 2015 request as a duplicate request which does not have to be fulfilled under the APRA. Further, counsel for the Assessor notes the records requested contain income information which is confidential under Indiana law.

Subsequently, you filed an additional request for records on November 6, 2015. The Office acknowledged this request. The Assessor contends the records requested from



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your November 6, 2015 request will be provided by November 25, 2015. You contend the records from your original request were never provided.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The St. Joseph County Assessor’s Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Assessor’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. See Ind. Code § 5-14-3-9(c).

Your request for public records dates back to August 27, 2015. You requested several records; however, you did not consider the request to be satisfactorily filled. The county attorney attempted to resolve the discrepancy via telephone. Based on the information provided, it appears as if your October request was a reiteration of a previous request – it merely provided clarification as to the form number your were requesting. It is my opinion your clarified request did not require a new acknowledgment.

The more pressing issue is why you did not receive the exact records you sought. You specifically requested “Form 130s” associated with PTABOA hearings. Counsel for the Assessor directed you to ask for these specifically in your clarified request, which you did in your October 5, 2015 correspondence. After a thorough examination of the Assessor’s response, it contains a constructive denial of the Form 130 request on page 2.



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The Assessor is withholding the form as it contains confidential information as defined by Ind. Code § 6-1.1-35-9.

However, that denial is not at issue in your complaint, I would caution the Assessor the entirety of Form 130 is likely not confidential. Only entries related to income, earnings, profits and loss, etc., may be redacted and the remainder released upon request. I encourage the Assessor to take this into consideration and reevaluate the denial found in the Assessor's response. If Form 130 contains non-confidential information, it should merely be redacted and not withheld in total. See Ind. Code § 5-14-3-6. The Assessor should also be mindful your request has been pending for a matter of months and time is of the essence in providing you with an appropriate response. I will reevaluate this matter if necessary and my expectation is that both parties work together to resolve the situation in a timely manner.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Frank Agostino, Esq.